

SOOS CREEK WATER & SEWER DISTRICT

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Comments Regarding Tax Reform and Health Reimbursement Arrangements

Submitted
March 27, 2013

Request:

A correction to Internal Revenue Code (IRC) section 105, which governs health reimbursement arrangements (HRAs) provided through voluntary employee beneficiary association (VEBA) trusts, to allow participants of certain plans upon death to pass their account to non-dependent beneficiaries.

Background and Justification:

IRC section 105(b) provides, generally, that gross income does not include amounts received under accident and health plans attributable to contributions by the employer if such amounts are paid to reimburse the taxpayer for expenses incurred by the taxpayer for the medical care of the taxpayer, his spouse, his dependents, and any child under the age of 27 by the end of the taxable year. HRA VEBAS are a vehicle used to provide such benefits.

In Revenue Ruling 2006-36, the Internal Revenue Service (IRS) held that payments under an HRA VEBA that provides for reimbursement of medical expenses for a non-spouse, non-dependent beneficiary of an employee are not excludable from the employee's gross income under IRC section 105(b). As a result, thousands of governmental employees and retirees with no spouse or qualified dependent(s) would run the risk of losing their unused HRA funds in the event of an untimely death.

To correct this, Congress added IRC section 105G) in the *Worker, Retiree, and Employer Recovery Act of 2008* (P.L. 110-458). The legislation remedied the situation for most HRA plans, but inadvertently omitted plans established by or for a political subdivision. Thus participants in plans provided by fire districts, school districts, public utility districts, counties, cities, ports, and other political subdivisions are still prohibited from passing on their hard-earned savings to a non-dependent beneficiary.

HRA plans provided through VEBA trusts are widely-used, valuable tools for public sector employers seeking to recruit and retain employees by offering them health care benefits competitive with the private sector. Over 1,100 employers and 130,000 employees throughout the country have been affected by the IRS ruling and would benefit from this correction.

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Solution:

This could be easily remedied by amending Section 105 (j)(2) by adding, after the phrase "in connection with a public retirement system," the following: " ... or established by or on behalf of a political subdivision thereof" and adding at the end subparagraph (B) "or 501(c)(9)." These modifications would rectify the situation and provide parity for all public employees participating in these plans. Limiting the revision to existing plans should make this proposal revenue neutral or perhaps a small revenue raiser due to the fact that while HRA VEBA contributions, earnings and withdrawals by participants, surviving spouses, and dependent heirs are not taxable, withdrawals by non-dependent heirs would be taxable.


Support:

Both the House and the Senate introduced similar legislation in the 112th Congress (H.R. 2698, S. 1366) and the bills received strong bipartisan sponsorship from numerous states and regions. This proposal is strongly supported by a broad coalition of counties, cities, ports, fire districts, public utility districts, school districts, other political subdivisions and their employees. Preliminary discussions with Congressional staff, including Ways and Means Committee staff and Senate Finance Committee staff, indicate support for this proposal.

Thank you for the opportunity to provide comments to the Committee.

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